IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.3..2007

Coram

The Honourable Mr.Justice DHARMA RAO ELIPE
and
The Honourable Mr.Justice K.CHANDRU

W.A.No.1679 of 1997

K.Muthukrishnan ...Appellant/Petitioner

-vs-

1. Government of Tamil Nadu
Rep. by Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai 600 009.

2. The Executive Engineer
Administrative Officer
Tamil Nadu Housing Board
Thirumangalam
Chennai - 101

3. Allottees Service Manager
Special Division 1, Housing Board
Thirumangalam Shopping Complex
Anna Nagar West Extension
Chennai 101 .. Respondents/Respondents

Appeal file under Clause 15 of the Letters Patent against the order of the learned single Judge dated 27.11.1997 made in W.P.No.17036 of 1997.

W.P.No.17036 of 1997:- To issue a writ of certiorarified mandamus to call for the records connected with the proceedings of the second respondent made in letter No. B3/1502/88 dated 3.1.1991 and 1/1502/88 dated 11.9.1997 and quash the same and farther direct the second respondent to execute and convey under a sale deed in respect of plot no 287-B measuring 1075 Sqft, in Arignar Annanagar, Western Extension to the petitioner.

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For Petitioner : Mr.B.Kumar, SC
for Mr.K.chandrasekaran

For Respondent 1 : Mr.M.Dhandapani, AGP

For Respondents 2&3: Mr.K.Selladurai

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ORDER

K.CHANDRU, J.

The appellant has filed the present appeal against the order of the learned single Judge made in W.P.No.17036/97 dated 27.11.1997, having dismissed the writ petition filed by the appellant on the ground of laches.

2. The appellant was an allottee of a plot in No.287-B in Anna Nagar West Extension belonging to the second respondent. The said allotment was made by the second respondent by order dated 26.8.1988. Under the said order, the appellant was allotted less than half a ground of land, i.e., 1075 sq.ft with a cost of Rs.41,250/- and he was directed to pay one third cost amounting to a sum of Rs.13,750/-. Accordingly, the appellant paid the said amount and possession was handed over to him. However, without notice to the appellant, the said allotment was sought to be cancelled. The appellant filed writ petition being W.P.No.16262 of 1989 challenging the cancellation. The said writ petition was allowed by the learned single Judge vide order dated 08.02.1990 on the ground that the appellant was not given any notice cancelling the allotment and all the contentions were left open. In the meanwhile, the said allotment was cancelled on the ground that the land allotted to the appellant was required for public purpose.

3. The appellant sent a representation dated 06.8.1997 and requested the Housing Board to execute the sale deed. However, the said request was rejected and the appellant was refunded the amount paid by him by the third respondent with a covering letter dated 11.9.1997. It was thereafter the appellant filed the writ petition which was under appeal. In the meantime the appellant had constructed a house and was also living in the said premises paying property tax, water tax and other taxes. He was also enjoying electricity supply in the said house. Initially the writ petition filed by the appellant and the similarly placed persons were allowed on the ground that no opportunity was granted to them before cancellation. However, subsequently, certain persons (not

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the appellant) filed writ petitions challenging the order of the Government in G.O.Ms.No.1048 Housing and Urban Development Department dated 31.10.1989, by which the Housing Board was directed to dispose of the said issue. As the said order did not give any discretion to the Housing Board, the said G.O., came to be challenged by the said persons (not the appellant) by way of writ petitions. The Housing Board contended that the said order was issued in terms of Section 155(1) of the Tamil Nadu Housing Board Act and, therefore, well within its power. The batch of writ petitions were disposed of by a common order dated 19.01.1991 by the learned single Judge wherein it was held by him that the original allotment was made by the Government to various allottees and the subsequent cancellation is illegal on the ground of promissory estoppel. The learned Judge also held that the Housing Board can enter into contract outside the purview of the Act and, therefore, the action of the Housing Board cannot be subsequently varied to the prejudice of various allottees.

4. The first respondent State and the Housing Board filed appeals and the said batch of appeals came to be disposed of by a Division Bench of this Court by judgment dated 25.1.1995 (since reported in AIR 1996 MADRAS 70 [The Secretary to Government, Housing and Urban Development Department, Madras and others etc. v. Ammani and etc., etc.) wherein the Bench had framed the following two issues for consideration :-

> "(i) Whether the allotments made to the petitioners were contracts outside the statute?
>
> (ii) Whether in the facts and circumstances of the case, it was open to the State Government in exercise of its power under S.155 of the Tamil Nadu State Housing Board Act, 1971 (hereinafter referred to as the Act) to issue a direction to the Housing Board to cancel the allotments of plots made in favour of the petitioners."

5. With reference to the first issue, the Division Bench held in paragraph 3 as follows :-

Para 3: "... Therefore, it is not possible to hold that allotment of sites to the writ petitioners is an act outside the contract. Consequently, it follows that whenever there is an illegality or infirmity in such proceedings including the allotment of sites or houses it would be open to the aggrieved persons to invoke the jurisdiction of this Court under Art.226 of the Constitution. However, learned singe Judge has held that it is a non-statutory act. That being so, we reverse the said finding of the learned

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single Judge. Accordingly, point (i) is answered as follows:- The allotment proceedings culminating in the allotment and execution of the deed are all statutory functions and are not non-statutory."

6. With reference to the second issue, the Bench did not agree with the opinion of the learned single Judge and held in paragraph 5 of the judgment as follows:-

Para 5: "... We are of the view that though the Government has got power to issue a direction as per S.155(1) of the Act, in the facts and circumstances of the case and in the light of the interpretation placed by us on S.155(1), it is not possible to hold that the power has been exercised by the State Government in accordance with law. It can only be termed as arbitrary exercise of the power. That being so, it cannot at all be sustained. If the power is exercised in such a manner, the interests of the citizens will not be safe. It is not the case of the State Government that the allottees have played any incredible or improper role for obtaining the allotment. In fact, the Housing Board and the State Government thought it necessary and expedient to have the sites converted into housing sites and allot them. If that be so, the subsequent act of the Housing Board in recommending for cancellation and the State Government in accepting such cancellation, cannot but be termed as arbitrary only. Accordingly, point (ii) is answered in the negative."

7. During the proceedings before the Division Bench, the order of the Housing Board as well as the Government were extracted. With reference to Anna Nagar West Extension, the plot allotted to the appellant, viz., 287-B, also finds a place. The Bench gave the following directions, which are found in paragraph 7 of the said judgment :-

Para 7: "We make it clear that this judgment will not affect the authority of the Housing Board to take such action as is necessary in individual cases wherein the conditions of allotment have not been complied with. Liberty in this regard is reserved to the Housing Board. We also make it clear that such of those allottees who are not able to pay the amount towards the allotments as per the terms of the allotment orders--whether in part or in full, shall pay the entire amount due as on this day on or before the end of March, 1995. On payment of the amount, the Housing Board shall complete the

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formalities and convey the title, of course, subject to the right of the Housing Board to take such actions as are necessary, in the event any of the conditions of allotment is violated. Such of the allottees who have not yet complied with the conditions and such of those who could not comply with the conditions having regard to the cancellation of the allotment orders, will be entitled to have the period from the date of cancellation till this date (i.e. pendency of the writ petitions and writ appeals) excluding for complying with the conditions."

8. In normal circumstances, the respondents should have granted similar relief to the appellant. But, on the contrary, they granted relief only to the persons who are covered by the second order of the learned single Judge dated 19.9.1991.

9. With reference to the appellant's case the Board rest contented with the order dated 03.01.1991 passed by them and merely stated that the appellant can file an appeal. No doubt, on the day when the order was made, the opinion of the learned single Judge dated 19.9.1991 was not available. However, when the request of the appellant dated 06.8.1997 was made for executing the sale deed and when the same was objected by the Housing Board on 11.9.1997, not only the order of the learned single Judge dated 19.9.1991, but also the judgment of the Division Bench dated 25.01.1995 was very much available for consideration of the respondents. In all fairness, the respondents should have granted the same relief to the appellant without driving him to file another writ petition. Unfortunately, the appellant's writ petition, which was filed in 1997, came to be dismissed at the stage of admission by the learned Judge vide order dated 27.11.1997. The learned Judge in paragraph 18 of the order held that the petitioner had slept over the matter and, therefore, there was no explanation forthcoming on the question of delay. However, the learned Judge found that the Division Bench judgment will be squarely applicable to the case of the appellant. But since the appellant had not filed the petition within the reasonable time, the writ petition was dismissed. It is against the said order of the learned single Judge, the present appeal is filed.

10. We have heard the arguments of Mr.B. Kumar, learned Senior Counsel leading Mr.K.Chandrasekaran, and Mr.M.Dhandapani, learned Additional Government Pleader representing the first respondent and Mr.K.Chelladurai for Respondents 2 and 3 and have perused the records.

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11. It is admitted by all parties that the judgment of the Division Bench in principle will apply to the facts of the case of the appellant. Though it was contended by Mr.K.Chelladurai, learned counsel appearing for the Respondents 2 and 3, that the Housing Board had returned the amount deposited by the appellant and the order of cancellation of allotment dated 03.01.1991 was not challenged within the reasonable period, he has fairly submitted that the appellant has put up construction and he is paying various taxes and he is also occupying the said premises.

12. In this context, he has relied upon a decision of the Supreme Court reported in AIR 1995 SC 1991 (State of Maharashtra v. Digambar), more particularly referred to in paragraph 21 and part of 22:

Para 21: "Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

Para 22: ... Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it."

13. We do not know as to how the said judgment has any bearing on the present case, when the appellant had diligently prosecuted the case earlier at the time of allotment and subsequently also, immediately after the decision of the Division Bench, he had made a request to the Housing Board for considering his case.

14. We have gone through the order of the earlier Division Bench and we find that the directions granted in the said Division Bench applies to the case of all concerned and, especially in paragraph 7, the Division Bench has given very limited scope for the Tamil Nadu Housing Board to act only in cases where either the

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amounts were not paid properly or allotees had not complied with the conditions of allotment and cancellation was permitted. Even the division bench in the aforesaid case was conscious about the pendency of the case and had also stated that pendency of the writ petition and the writ appeal should be excluded in respect of complying with the conditions by the allottees. We cannot forget the fact that the Division Bench has held that cancellation of allotment made by the Housing Board at the behest of the Government is arbitrary and there are no actual grounds to cancel and also the further fact that as the appellant had constructed the house and has been living there and also paying tax, no useful purpose would be served in denying the relief to the appellant.

15. Under the circumstances, it is a fit case where the appellant should be granted the relief. Accordingly the writ appeal shall stands allowed. Respondents 2 and 3 are directed to inform the appellant the exact amount to be paid towards the allotment of the plot within a period of two weeks from the date of receipt of a copy of this order. We also direct the respondents 2 and 3 to execute the sale deed in favour of the appellant within a period of four weeks thereafter. However, there will be no order as to costs. Consequently, C.M.P.No.18915 of 1997 will stand closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   Government of Tamil Nadu
   Housing and Urban Development Department
   Fort St. George
   Chennai 600 009.

2. The Executive Engineer
   Administrative Officer
   Tamil Nadu Housing Board
   Thirumangalam
   Chennai - 101

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3. Allottees Service Manager
Special Division 1, Housing Board
Thirumangalam Shopping Complex
Anna Nagar West Extension
Chennai 101

+ 1 cc to Mr. R. Loganathan, Advocate, SR No.18714

+ 1 cc to Mr. K. Chelladurai, Advocate, SR No.18603

+ 1 cc to the Government Pleader, SR No.18662

Order in
W.A.No.1679 of 1997

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